

## **REMARKS**

Claims 41, 42, 45, 47, 48 and 50-53 are currently pending in the application. Claims 1-30, 43 and 44 have been withdrawn pursuant to the Office's Restriction Requirement. Claims 31-40, 46, 49, 54 and 57-59 have previously been canceled. Claims 41, 45, 47 and 48 have been amended as discussed below without prejudice to, or disclaimer of, the subject matter thereof. Applicants reserve the right to file divisional or continuing applications directed to the subject matter of any claim withdrawn, canceled or amended for any reason.

It is submitted that no new matter has been introduced by the amendments with support found throughout the specification as filed. By the amendments, Applicants do not acquiesce to the propriety of the Office's rejections and do not disclaim any subject matter to which Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 USPQ.2d 1865 (US 1997).

### **I. Withdrawn Rejections**

Applicants thank the Office for the withdrawal of rejections under 35 U.S.C. §§ 102 and 112. Office Action mailed December 17, 2009 ("OA"), pages 2 and 4.

### **II. Claim Rejections**

#### **A. Obviousness-Type Double Patenting**

Claims 41, 42, 45, 47, 48 and 50-53 stand rejected on the ground of nonstatutory obviousness-type double patenting over claims 48 and 49 of U.S. Patent No. 6,777,432 and claims 1 and 2 of U.S. Patent No. 7,151,112. OA, page 2. As stated in the response to the previous Office Action, Applicants respectfully disagree. Nonetheless, and solely to expedite prosecution of the pending claims, Applicants file herewith a terminal disclaimer over U.S. Patent Nos. 6,777,432 and 7,151,112. Accordingly, Applicants respectfully request the withdrawal of the pending rejections of claims 41, 42, 45, 47, 48 and 50-53 based on obviousness-type double patenting.

#### **B. 35 U.S.C. § 103**

Claims 41, 42, 45, 47, 48 and 50-53 stand rejected under 35 U.S.C. § 103 because, according to the Office, "R5 can be alkyl and it would be obvious to try and

modify the compound by substituting the H to an alkyl and expect the properties to remain the same.” OA, page 4. Applicants respectfully disagree. Nonetheless, and solely to expedite prosecution, Applicants have removed alkyl from the claims as an R5 substituent. Accordingly, Applicants respectfully request that the Office reconsider and withdraw the pending rejections of claims 41, 42, 45, 47, 48 and 50-53 under 35 U.S.C. § 103.

### **CONCLUSION**

Applicants have properly and fully addressed each of the Office’s grounds for rejection. Applicants submit that the present application is now in condition for allowance. If the Office has any questions or believes further discussion will aid examination and advance prosecution of the application, a telephone call to the undersigned is invited. If there are any additional fees due in connection with the filing of this amendment, please charge the fees to K&L Gates Deposit Account No. 50-3207. If any extensions or fees are not accounted for, such extension is requested and the associated fee should be charged to our deposit account.

Respectfully Submitted,

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